

REMARKS

Currently, claims 60, 64-65, 67-72, 74, and 76-83, including independent claim 60, are pending in the present application. Independent claim 60 was rejected in the recent Office Action under 35 U.S.C. § 103(a) as being obvious over U.S. Patent Application Pub. No. 2004/0077093 to Pan in view of Arai, et al. and U.S. Patent No. 4,407,960 to Tratnyek. In the previous response, Applicant pointed out that independent claim 60 required that the substrate on which the visual indicating agent is disposed is *located within a passage* of a tubular carrier portion so that the substrate is better able to contact the breath sample when a user blows into the tubular carrier portion. To the contrary, the ammonia sensing membrane 127 of Pan is attached to the bottom of a container 117. ¶ [0065]. Nevertheless, the Examiner asserted that the membrane was still located within a “side passage” of a tubular carrier portion. While Applicant respectfully disagrees with this interpretation, independent claim 60 has nonetheless been amended to clarify this distinction. That is, independent claim 60 now more clearly specifies that the substrate on which the visual indicating agent is disposed is located within a “tubular carrier portion of a breath collecting device through which the breath of a user passes.” Clearly, the ammonia sensing membrane 127 of Pan is not located within a tubular portion, much less one through which the breath of a user passes.

The recent Office Action also cited Tratnyek in combination with Pan for the teaching of Michler’s hydrol as a sterilization indicator for ethylene oxide. Applicant previously noted, however, that the triarylmethane dye of Tratnyek is actually reacted with an acidic compound to produce a color that changes to colorless in the presence of

ethylene oxide, and that one of ordinary skill in the art would not have been motivated to selectively pick and choose a single type of triarylmethane dye used in a reaction for detecting ethylene oxide for incorporation into the ammonia detection system of Pan. The recent Office Action argues, however, that Michler's hydrol is used in Tratnyek as an indicator for any type of "alkylating agent" and that "ammonia is a type of alkylating agent." Applicant respectfully points out, however, that Tratnyek is specific for alkylating *sterilants*, not just any agent in general. Perhaps more importantly though, *ammonia is not an alkylating agent* as suggested in the Office Action. An alkylating agent is a molecule that transfers an alkyl group to another molecule. Ammonia (-NH_3) lacks an alkyl group and thus cannot transfer an alkyl group to another molecule. Thus, for at least the reasons indicated above, it is respectfully submitted that independent claim 60 patentably defines over the cited references.

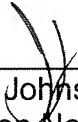
Applicants respectfully submit that the present application is in complete condition for allowance and favorable action, therefore, is respectfully requested. Examiner Portner is invited and encouraged to telephone the undersigned, however, should any issues remain after consideration of this Amendment.

Please charge any additional fees required by this Amendment to Deposit Account No. 04-1403.

Appl. No. 10/687,327
Amdt. dated Jul. 11, 2008
Reply to Office Action of May 12, 2008

Respectfully requested,

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